JAMES W. HANSEN ET AL.

IBLA 70-208 Decided December 2, 1070

Mining Claims: Lands Subject to

Lode mining claims are properly declared null and void ab initio when they are located on land not open to appropriation under the mining laws because the minerals in the lands have been reserved to the grantor in perpetuity in a warranty deed which conveyed only the surface to the United States in consummation of a Forest Exchange, pursuant to the Act of March 20, 1922, as amended, 16 U.S.C. §§ 485, 486 (1964).

Mining Claims: Assessment Work

Assessment work is required only to preserve the exclusive right to the possession of a valid mineral location on which discovery has been made, as against other locators, and is not a matter of concern to the United States; assessment work performed in connection with mining claims which are null and void ab initio will not cure the invalidity of such claims.

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IBLA 70-208	: S 3652
JAMES W. HANSEN	: Lode Mining Claims
OTTO HANSEN	: declared null and void
JOHN G. BICART	: ab initio
	: Affirmed

DECISION

James W. Hansen, on behalf of himself and his partners, Otto Hansen and John G. Bicart, has appealed to the Secretary of the Interior from a decision of the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, Bureau of Land Management, dated June 25, 1970, which affirmed a decision of the Bureau's Sacramento, California, land office dated May 18, 1970, declaring, inter alia, the Three Ravines # 2, as amended, and the Twins # 1 lode mining claims null and void ab initio to the extent they are situated in SW 1/4 NE 1/4, SE 1/4 NW 1/4, N 1/2 SW 1/4 section 2, and all section 3, T. 22 N., R. 5 E., M.D.M., Butte County, California.

The claims were held null and void to the extent the land they embrace was not open to appropriation under the United States mining laws when the attempts to locate them were made in March and September 1964, and in October 1965.

The record shows that a land patent to SW 1/4 NE 1/4, SE 1/4 NW 1/4, N 1/2 SW 1/4 section 2, T. 22 N., R. 5 E., M.D.M., was issued by the United States on April 14, 1890, to Thomas N. Davis, and a land patent to all section 3, same township, was issued by the United States to the Central Pacific Railroad Company on April 5, 1880. Neither of these patents reserved any mineral rights to the United States. Following mesne conveyances, full title to the land and mineral estate in these tracts became vested in the Swayne Lumber Company, which reconveyed title to the surface only of these lands to the United States in Forest Exchange, Sacramento 032051, pursuant to the Act of March 20, 1922, as amended, 16 U.S.C. §§ 485, 486 (1964), by a warranty deed dated December 26, 1939, and recorded in the records of Butte County, California, on December 28, 1939. The warranty deed reserved all minerals in the conveyed lands to the

grantor in perpetuity. The surface of the lands is now administered by the Forest Service, U.S. Department of Agriculture, as the lands are within the Plumas National Forest. The record further indicates that the Three Ravines # 2 lode mining claim was located on March 12, 1964, and amended and relocated on October 3, 1965. The Twins # 1 lode mining claim was located on September 21, 1964.

The land office decision held that the mineral estate not owned by the United States is not open to exploitation under the United States mining laws, citing Kenneth E. Corliss, Washington 04056-C (November 6, 1964). The Chief, Branch of Mineral Appeals, affirmed the land office decision, holding that the mining laws (30 U.S.C. 322 (1964)) are applicable only to "valuable mineral deposits" owned by the United States, that since the minerals in the subject lands have not been owned by the United States since 1880 or 1890, locations of mining claims made in 1964 were null and void ab initio, that performance of annual assessment work by the mining claimants is a protective device against rival claimants, not against the United States, citing Wilbur v. Krushnic, 280 U.S. 306 (1930), that payment of county taxes does not impart validity of the claim, and that authority to determine the validity of a mining claim lies only with the Department of the Interior.

Appellant contends essentially that the lower decisions erred in their interpretation of the applicable laws, that at the time the reserved mineral interest of the Swayne Lumber Company was repossessed by the State of California because of Swayne's failure to pay the real property taxes, the reservation of minerals to the Swayne Lumber Company ceased, and the mineral estate was opened to exploration under the United States mining laws. It is further contended that the subject mining claims were properly located and have been maintained since date of location through the performance of annual assessment work as required by the mining laws, as well as by payment of taxes to the county, and that the Department of the Interior has no authority to determine the validity of a mining claim, that being a matter for the courts to decide.

The short answer to the appellants is that, according to the record, the mineral estate in SE 1/4 NW 1/4, SW 1/4 NE 1/4, N 1/2 SW 1/4, section 2, all section 3, T. 22 N., R. 5 E., M.D.M., is not owned by the United States, and so is not open to location and entry under the United States mining laws. 30 U.S.C. § 22 (1964). The land office correctly held the purported mining claims, Three Ravines # 2 and Twins # 1 lode mining claims of James W. Hansen, et al., null and void ab initio because the minerals in these lands are owned by others than by the United States.

It is of no consequence that appellants have asserted ownership of the minerals by ostensible compliance with the mining laws and by payment of the real property taxes. Nor does it make any difference whether the mineral interest in the subject lands reserved by the Swayne Lumber Company in the warranty deed of December 26, 1939, is now held by Swayne or by a successor through a tax deed. The crucial point is that the mineral interest has never been reconveyed to the United States. Furthermore, it is immaterial that the Forest Exchange, Sacramento 032051, might have contemplated a reservation of minerals to Swayne for a term of 20 years only. The warranty deed reserved the mineral in perpetuity and was so accepted by the United States when it consummated the exchange.

The appellant is in error in his contention that the Department of the Interior has no authority to determine the validity of unpatented mining claims. The broad power of the Department of the Interior over public lands gives the Department undisputed jurisdiction over most aspects relating to the validity of mining claims. Cameron v. United States, 252 U.S. 450 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Davis v. Nelson, 329 F. 2d 840 (9th Cir. 1964).

We find no error in the lower decisions. Whatever rights James W. Hansen and his partners may have in and to the minerals in SW 1/4 NE 1/4, SE 1/4 SW 1/4, N 1/2 SW 1/4 section 2, all section 3, T. 22 N., R. 5 E., M.D.M., California, must be derived from the title to the mineral estate in these lands reserved to the Swayne Lumber Company in the warranty deed of December 26, 1939. They cannot derive any rights to the mineral estate from their purported location of the Three Ravines # 2 and the Twins # 1 lode mining claims under the United States mining law, as the law simply does not authorize the location of mining claims for the exploitation of privately owned mineral deposits.

Appellant James W. Hansen has also made statements in the appeal concerning alleged improper acts on the part of Forest Service employees. None of his statements have any relevancy to the basic question involved here as to whether the claims were located for minerals owned by the United States, nor do the statements show any error in the decisions below.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Edward W. Stuebing, Member

I concur:

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Newton Frishberg, Chairman

I concur:

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Martin Ritvo, Member